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June 16, 2003

US Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street, SW
Washington, DC 20590
Docket #FMCSA-2003-14911 - 9

DEPT. OF TRANSPORTATION
DOCKETS

2003 JUN 17 A 9:14

This is to submit comments on behalf of the Drug and Alcohol Testing Industry Association (DATIA) in opposition to the Federal Motor Carrier Safety Administration's (FMCSA) May 15, 2003 Notice of Application for Exemption - Request for Comments concerning Mayflower Transit LLC and United Van Lines LLC's request to be exempt from certain controlled substances and alcohol testing regulations.

DATIA is an 1,100-member national trade association representing the full spectrum of drug and alcohol testing service agents including laboratories, collection sites, C/TPAs, BATs, MROs, SAPs, employers, and testing device manufacturers. DATIA's mission includes working closely with key policy makers in Federal Agencies and in Congress to ensure that the interests of the industry are heard and taken into account when changes in drug and alcohol testing rules are proposed. DATIA works to ensure that these changes foster rather than hinder the industry's growth. DATIA further works to educate the industry on current standards of service and regulatory policies and procedures.

DATIA opposes an exemption from certain drug and alcohol testing regulations for Mayflower Transit and United Van lines for numerous reasons. To allow employers to include non-covered employees in the same pool as FMCSA covered employees would have far reaching negative effects on the FMCSA drug and alcohol testing program. While both employers state that they will differentiate between "CDL drivers" and "Non-CDL drivers" in the pool, the fact that the exemption is being requested due to a recent compliance audit where all employees were in one pool without being identified draws suspicion that this will be accomplished in the future. If non-covered employees are included in the same pool as covered employees, differentiated or not, the possibility of "watering down" the pool and not testing covered employees at the required level is increased. In addition, the proposed program to test at 55% for drugs of abuse and 15% for alcohol will not statistically ensure that the minimum random rates are met for covered employees if non-covered employees are included in the same pool.

DATIA Comments to FMCSA

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Furthermore, if both companies take the time to differentiate covered employees from non-covered employees, a minimal effort would be needed to place the differentiated employees into different testing pools or databases. Many software providers offer software solutions to this very situation as numerous other companies manage covered and non-covered pools of employees. Consortia and Third Party Administrators are also very experienced at offering this service to members. Since the inception of the DOT drug and alcohol testing regulations, operating separate pools for covered and non-covered employees has been a standard practice.

The notice states that Mayflower and United Van Lines wish to use the same standards, forms and requirements, and testing pool for covered and non-covered employees. All of these can be easily accomplished, and as stated above are routinely done, except for the use of the same testing pool and form for covered and non-covered testing. One solution, that DATIA has previously proposed, is to modify the Federal Drug Testing Custody and Control Form to make it available for non-covered testing. This could be accomplished by including a check box for "Federal Testing" and "Non-Federal Testing". While there are regulatory and federal issues to be addressed in order to accomplish this, DATIA sees that this must be accomplished in order for employers to use one form for all testing. In the absence of this, employers must continue to use different forms for their non-covered employee testing.

DATIA appreciates the opportunity to provide these comments to the FMCSA. Should you have any questions or need further elaboration on our reasons for opposing the exemption request, I can be reached at 800-355-1257 or lshelton@wpa.org.

Sincerely,



Laura E. Shelton
Executive Director

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**Drug & Alcohol Testing Industry Association**

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TO:
COMPANY: Docket Management Facility
FAX: 202-493-2251
DATE: Monday, June 16, 2003
PAGES: <u>3</u> including cover
FROM: Laura Shelton
<input type="checkbox"/> Urgent <input type="checkbox"/> Please Review <input type="checkbox"/> Please Comment <input type="checkbox"/> For your information

MEMO:

Enclosed are DATIA's comments for docket FMCSA-2003-14911
